

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 94-2307 CW

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

EDMUND G. BROWN, Jr., et al.,

Defendants.

ORDER DENYING
DEFENDANTS'
MOTION TO COMPEL
AND GRANTING
PLAINTIFFS'
MOTION FOR A
PROTECTIVE ORDER
AND TO QUASH
DEFENDANTS'
SUBPOENAS (Docket
Nos. 1840 and
1844)

Defendants Edmund G. Brown, Jr., et al., move to compel further responses to their interrogatories and document requests concerning Plaintiffs John Armstrong, et al.'s attorneys' fees motion. Plaintiffs oppose Defendants' motion and move for a protective order and to quash Defendants' seven deposition subpoenas. Defendants oppose this motion. The motions were taken under submission on the papers. Having considered the papers submitted by the parties, the Court DENIES Defendants' motion to compel and GRANTS Plaintiffs' motion for a protective order and to quash Defendants' subpoenas.

BACKGROUND

In this action, Plaintiffs' counsel has been paid at rates that have not changed since 2008.

On August 20, 2010, Plaintiffs filed a Motion to Compel Compensation at Plaintiffs' Counsel's Reasonable 2010 Hourly Rates. Briefing on the motion was suspended, pending the parties' effort to resolve the matter through mediation. Mediation was not

1 successful.

2 On January 3, 2011, Defendants served Plaintiffs with
3 interrogatories and requests for documents, seeking evidence
4 concerning the reasonableness of Plaintiffs' counsel's rate
5 increases, which Defendants represent to be between eight and
6 twenty-eight percent. Defendants state that they do not challenge
7 the "reasonableness of Plaintiffs' 2010 rates, but rather the
8 reasonableness of Plaintiffs' eight to twenty-nine percent firm-
9 wide rate increases from the 2008 rates." Morris Decl., Ex. A, at
10 1 (emphasis in original). On or about February 8, 2011, Defendants
11 served subpoenas on seven attorneys who submitted declarations in
12 support of Plaintiffs' motion to compel. The subpoenas demand that
13 the declarants appear for depositions and produce various
14 documents, including those on which they relied in forming the
15 statements and opinions they offered in their declarations.

16 DISCUSSION

17 "A request for attorney's fees should not result in a second
18 major litigation." Hensley v. Eckhart, 461 U.S. 424, 437 (1983).
19 Thus, "discovery in the context of post-trial fee disputes should
20 not involve 'the type of searching discovery that is typical' in
21 resolving the merits of a case." Muniz v. United Parcel Serv.,
22 Inc., 2011 WL 311374, at *3 (N.D. Cal.) (citing Nat'l Ass'n of
23 Concerned Veterans v. Sec'y of Defense, 675 F.2d 1319, 1329 (D.C.
24 Cir. 1982)).

25 Reasonable rates "are to be calculated according to the
26 prevailing market rates in the relevant community, regardless of
27 whether plaintiff is represented by private or nonprofit counsel."

1 Blum v. Stenson, 465 U.S. 886, 895 (1984). The party seeking fees
2 "has the burden to prove that the rate charged is in line with" the
3 relevant community's prevailing market rates. Carson v. Billings
4 Police Dep't, 470 F.3d 889, 891 (9th Cir. 2006). A court may not
5 award fees based on speculation; the "district court's function is
6 to award fees that reflect economic conditions in the district."
7 Moreno v. City of Sacramento, 534 F.3d 1106, 1115 (9th Cir. 2008).

8 Defendants complain that Plaintiffs' interrogatory responses
9 and documents fail to disclose information necessary to evaluate
10 the reasonableness of the rate increases they seek. Defendants
11 also complain that Plaintiffs failed to provide a privilege log.
12 As noted above, Plaintiffs bear the burden of establishing the
13 reasonableness of their counsel's rates; if their supporting
14 documents are not sufficiently probative, their request for an
15 increase in their counsel's rates will be denied. Further, the
16 Court will strike portions of Plaintiffs' supporting declarations
17 to the extent that declarants represent, without data, that rates
18 at their law firms increased between 2008 and 2010. Absent actual
19 figures, such as the amount by which rates increased, these
20 statements are not relevant to Plaintiffs' motion to compel.
21 Plaintiffs may, if they find it necessary, supplement the
22 declarations they filed in support of their motion to compel. If
23 they intend to do so, Plaintiffs shall file and serve Defendants
24 with such supplemental declarations by March 4, 2011. Defendants'
25 complaint about the lack of a privilege log is not well-taken;
26 Plaintiffs' responses identify the nature of documents withheld and
27 explain the claim of privilege.

1 Plaintiffs seek a protective order quashing all seven
2 deposition subpoenas served by Defendants and prohibiting any
3 further discovery on the current fees matter. Seven depositions
4 are not necessary to resolve Plaintiffs' motion to compel and would
5 be unduly burdensome. Accordingly, these depositions are quashed.
6 Defendants shall not obtain any further discovery concerning
7 Plaintiffs' motion to compel.

8 CONCLUSION

9 For the foregoing reasons, the Court DENIES Defendants' Motion
10 to Compel Further Responses to Defendants' Interrogatories and
11 Request for Production of Documents (Docket No. 1840) and GRANTS
12 Plaintiffs' Motion for Protective Order and To Quash Defendants'
13 Subpoenas (Docket No. 1844). As noted above, to provide data
14 concerning rate increases at the law firms of their declarants,
15 Plaintiffs may proffer supplemental declarations in support of
16 their motion to compel. If they intend to do so, Plaintiffs shall
17 file and serve Defendants with such supplemental declarations by
18 March 4, 2011. Defendants' seven subpoenas, served on or about
19 February 8, 2011, are hereby quashed. Defendants shall not obtain
20 any further discovery concerning Plaintiffs' motion to compel.

21 IT IS SO ORDERED.

22 Dated: March 1, 2011



23 CLAUDIA WILKEN
24 United States District Judge